

substituted phenylene, and R₃ includes alkylene, phenylene, substituted alkylene, or substituted phenylene, and

wherein R₄, R₅, and R₆ individually include alkylene, phenylene, substituted alkylene, or substituted phenylene, and R₇, R₈ and R₉ individually include hydrogen, hydrocarbyl, phenyl, methoxyphenyl, alkylphenyl, substituted alkyl, and substituted phenyl.

26. (Amended) A method of making a gel composition, comprising:

mixing an alcohol, an ether, and combinations thereof with a polymer compound selected from the group consisting of diblock copolymers, triblock copolymers, star polymers, radial polymers, multi-block copolymers, and combinations thereof, wherein the polymer compound has at least one rigid block selected from the group consisting of polystyrene, polyethylene, polyvinylchloride, and phenolics and one elastic block selected from the group consisting of ethylene/butadiene copolymers, polyisoprene, polybutadiene, ethylene/propylene copolymers, ethylene-propylene/diene copolymers;

heating the mixture;

agitating the mixture until the mixture becomes homogeneous; and

cooling the mixture.

27. (Amended) A method of making a gel composition, comprising:

mixing an ester, an alcohol, an ether or a naturally occurring fat or oil with polybutadiene,

heating the mixture;

agitating the mixture until the mixture becomes homogeneous; and

cooling the mixture.

REMARKS/ARGUMENTS

Claims 1, 2 and 6-27 are pending in the application. The Applicants note that the Examiner has indicated that claim 2 is no longer pending. However, nothing in the file history indicates that claim 2 has been cancelled. The Examiner has indicated that claims 1 and 6-27 are rejected. In

response to the present Office Action, claims 1, 20, 25, and 26 have been amended to recite polymers having at least one rigid block selected from the group consisting of polystyrene, polyethylene, polyvinylchloride, and phenolics and one elastic block selected from the group consisting of ethylene/butadiene copolymers, polyisoprene, polybutadiene, ethylene/propylene copolymers, ethylene-propylene/diene copolymers. Claims 24 and 27 have been amended to recite only polybutadiene. No claims are added or cancelled. Thus, upon entry of this amendment claims 1-2 and 6-27 are pending in the application. The Applicants respectfully request reconsideration in view of the following remarks.

RESPONSE TO REJECTIONS UNDER 35 U.S.C. § 112

Claims 8 and 10 are rejected under 35 U.S.C. §112 as being indefinite for failing to particularly point out and distinctively claim the subject matter which applicants regard as the invention. Specifically, the claims are rejected for depending from a canceled claim.

In response the Applicants respectfully submit that the claims are not indefinite since claim 2 has not been cancelled from the application. Nothing in the file history indicates that claim 2 was cancelled. For example, the Office Action mailed on March 15, 2002 indicates that claims 1-2 and 6-27 are pending. In response to the March 15, 2002 Office Action, the Applicants amended claims 1, 20, 25 and 26. After an Advisory Action, the Applicants filed an RCE requesting that the response to the March 15, 2002 Office Action be considered. Thereafter, the present office action was mailed on October 10, 2002. Thus, claim 2 has not been cancelled. Therefore, claims 8 and 10 are not indefinite since they do not depend from a cancelled claim. The Applicants respectfully request the Examiner withdraw the rejection of claims 8 and 10 under 35 U.S.C. §112, second paragraph.

RESPONSE TO REJECTIONS UNDER 35 U.S.C. § 103(A)

Claims 1, 6-23, 25 and 26 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Stoy et al. (Stoy)*, U.S. Patent 6, 688, 855 or *Peiffer et al. (Peiffer)*, U.S. Patent 4, 427, 812. In making the rejection the Examiner stated:

“The Stoy patent teaches block polymers which can be mixed with the compounds processing either ester ether or alcohol groups. See Specifically columns 5 and 6.

The Peiffer patent shows block copolymers at column 4 lines 60+. Mixing these block copolymers with the compounds containing either ester, ether or alcohol groups is suggested by the incorporation of the compounds shown at column 6 lines 35+ as well as columns 7 and 8. In view of this disclosure, these claims are rendered prima facie obvious.”

Office Action of October 10, 2002

Claims 24 and 27 are rejected under 35 U.S.C. §103(a) as being unpatentable either over U.S. Patent 5,635,171 to Nadaud (*Nadaud*) or U.S. Patent 6,156,713 to *Chopra et al.* (*Chopra*), or U.S. Patent 6,352,963 to *Ramin et al.* (*Ramin*). In making the rejection the Examiner stated:

“The Nadaud patent shows applicants’ instantly claimed polymeric component at column 3 lines 55+. The functional compound is shown at column 4 lines 10+. The Examples of this patent show these compounds used in combination with one another and as such the claims are rendered prima facie obvious. Chopra shows applicants’ instantly claimed polymers at column 7 lines 55+. The instantly claimed compounds are shown at columns 8-10. The Examples further show combining these polymers with the compounds as claimed. In view of this disclosure, applicants’ claims are not patentable. The Ramin patent also shows the combination of the instantly claimed polymers specifically at the column 2 lines 20+ with the claimed compounds at columns 3 and 5. In view of this disclosure, applicants’ claims are rendered prima facie obvious.”

Office Action of October 10, 2002

I. The Law Regarding Obviousness

To reject claims of an application under 35 U.S.C. §103(a), an examiner has the burden of establishing an unrebutted *prima facie* case of obviousness. See *In re Deuel*, 51 F.3d 1552, 1557, 34 U.S.P.Q.2d 1210, 1214 (Fed. Cir. 1995). To establish a *prima facie* case of obviousness three criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the

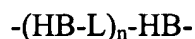
reference or to combine reference teachings. Furthermore, the motivation to modify or combine the teachings of the prior art must be identified in making and sustaining an obviousness rejection. *See In re Rouffet*, 149 F.3d 1350, 47 U.S.P.Q.2d 1453 (Fed. Cir. 1998) (reversing an obviousness rejection for lack of identification by the Examiner and the Board of motivation to combine prior art references). Second there must be a reasonable expectation of success. Finally, the prior art must teach or suggest all the claim limitations. MPEP §2143. In the absence of a proper *prima facie* case of obviousness, an applicant who complies with the other statutory requirements is entitled to a patent. *See In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992).

II. Application of the Law Regarding Obviousness

The Applicants respectfully submit that none of the applied references, alone or in combination, establishes a *prima facie* case of obviousness. The Applicants reasons are stated as follows.

A. Response to Rejection Based on U.S. Patent 5,688,855 to Stoy, et al.

U.S. Patent 5,688,855 to *Stoy et al.* is directed to thin film hydrophobic coating compositions. *See, Title*. The compositions include polymer components A and B. *See, Abstract*. Blends of Components A and B tend to separate in the absence of a common solvent C. *See, Abstract*. *Stoy* teaches that Component A includes a central polymer portion, X, and terminal polymer portions, T₁ and T₂. With respect to the terminal portions T₁ and T₂, *Stoy* teaches that T₁ and T₂ are based on polymers and copolymers of acrylic acid, methacrylic acid; hydrophilic esters of acrylic and methacrylic acid; alkylene oxide, maleic acid, styrene sulfonic acid, vinylpyrrolidone, acylamide, and N-substituted acrylamide or methylvinyl ether. The central portion X is described by the formula:



where HB indicates a hydrophobic polymer segment and L is a linking sequence. *Col. 5, ll. 1-10*. With respect to the hydrophobic polymer segment, HB, *Stoy* teaches that HB may be based on polymers and copolymers of a variety of compounds. *See, Col 5, ll. 13-27 and Col 6, ll. 1-24*. However, none of these materials meets the limitation of independent claims 1, 20, 25, and 26,

reciting a polymer having at least one rigid block selected from the group consisting of polystyrene, polyethylene, polyvinylchloride, and phenolics and one elastic block selected from the group consisting of ethylene/butadiene copolymers, polyisoprene, polybutadiene, ethylene/propylene copolymers, ethylene-propylene/diene copolymers.

Because *Stoy* fails to teach, suggest or disclose such polymers, *Stoy* does not teach suggest or disclosure each and every element of the present independent claims. Thus, *Stoy* fails to establish a *prima facie* case of obviousness with respect to the present claims. Therefore, the Applicants respectfully request that the rejection of claims 1, 6-23, 25 and 26 under 35 U.S.C. §103(a) be withdrawn.

Moreover, the Applicants respectfully submit that *Peiffer* is not prior art for §103 purposes because it is nonanalogous art. In order to rely on a reference as the basis for rejection under §103, the reference must either be in the Applicants' field of endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned. *MPEP §2141.01(a)* and *In re Oetiker*, 977 F.2d 1443, 1446 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). The *Peiffer* reference is not in the Applicants' field of endeavor because it is directed at a process for the gelation of salt-water solutions. *Abstract.* Being directed processes, *Peiffer* is not reasonably pertinent to the particular problem of the present invention which has nothing to do with salt-water solutions. Thus, *Peiffer* is not analogous art and is an improper reference for the purposes of §103. Thus, the reliance on *Peiffer* is improper. Thus, *Peiffer* fails to establish a *prima facie* case of obviousness against the rejected claims and the Applicants respectfully request that the rejection under 35 U.S.C. §103 based on *Peiffer* be withdrawn.

B. Response to Rejection Based on U.S. Patent 4,427,812 to *Peiffer*, et al.

The disclosure of *Peiffer* is directed to a process for the gelation of saltwater. The process uses a nonionic surfactant and a water insoluble sulfonated polymer. Suitable water insoluble polymers are disclosed at Col. 4, ll. 56-68 and at Col 5, ll. 59-Col. 6, ll. 2. None of the enumerated polymers meet the limitation in independent claims 2, 20, and 25 requiring that the polymer have at least one rigid block selected from the group consisting of polystyrene, polyethylene, polyvinylchloride, and phenolics and one elastic block selected from the group consisting of

ethylene/butadiene copolymers, polyisoprene, polybutadiene, ethylene/propylene copolymers, ethylene-propylene/diene copolymers.

C. Response to Rejection of Claims 24 and 27

The Applicants respectfully submit that *Nadaud*, *Chopra*, and *Ramin*, individually or in combination, fail to disclose each and every element recited in independent Claims 24 and 27. Specifically, Claims 24 and 27 recite a method wherein the ester, alcohol, ether, or naturally occurring fat or oil is mixed with polybutadiene. Nothing in *Nadaud*, *Chopra*, nor *Ramin* teaches or suggests compositions comprising polybutadiene. Moreover, there is no suggestion in either reference that would motivate one skilled in the art to modify the references to arrive at the subject matter of Claims 24 and 27. Thus, a *prima facie* case of obviousness has not been established against Claims 24 and 27. Therefore, the Applicants respectfully request that the rejections under 35 U.S.C. §103 based on *Nadaud*, *Chopra*, and *Ramin* be withdrawn.


CONCLUSION

Applicants have addressed the Examiner's rejections. In conjunction with the arguments above, Applicants believe that the claims are now in condition for allowance and respectfully request that the Examiner grant such an action. If any questions or issues remain in the resolution of which the Examiner feels will be advanced by a conference with the Applicants' attorney, the Examiner is invited to contact the attorney at the number noted below.

The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment, to Deposit Account 10-0447, reference 42133.9USPT(BAI).

Respectfully submitted,

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